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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 84

GEO. C. HOPKINS, COLLECTOR OF INTERNAL REVENUE, PETITIONER

vs.

C. W. BACON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 17, 1930
CERTIORARI GRANTED MAY 26, 1930

SUPREME COURT OF THE UNITED STATES

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A

[Caption omitted.]

1 In United States District Court Northern District of Texas

Plaintiff's first amended original petition

Filed June 25, 1928

To the Honorable Wm. H. Atwell, Judge of said Court:

Now comes C. W. Bacon, who will be hereinafter styled plaintiff, and, with leave of the court, files his first amended original petition in lieu of his original petition heretofore filed, and, complaining of George C. Hopkins, who will be hereinafter styled defendant, respectfully alleges:

2 I

The plaintiff is a citizen of the United States and of the State of Texas, and resides in Abilene, Taylor County, Texas, which is in the Abilene division of this court. The defendant is the duly appointed, qualified, and acting collector of internal revenue for the Second District of Texas and has held that office continuously since prior to 1927. He resides in Dallas, Dallas County, Texas, which is in the Dallas division of this court.

II

The acts and conduct on the part of the said defendant hereinafter complained of were done by him in his official capacity under instructions from his superior officers. There was probable cause for his conduct and he is entitled to a certificate of probable cause in the event judgment is rendered herein against him.

III

For cause of action plaintiff would show to the court that he married in the year 1894 and that he and his said wife have since that time continuously maintained the married relation and have continuously lived in the State of Texas and been citizens thereof since the date of his said marriage. Neither the plaintiff nor his said wife had any property at the date of their marriage and neither has since acquired any property by gift, devise, or descent, except the property given by the plaintiff to his wife as herein set forth.

3

IV

By their joint efforts the plaintiff and wife had accumulated, prior to the year 1927, a considerable amount of property, which consisted of real estate situated in the State of Texas, shares of the capital stocks of various Texas corporations, money, and funds loaned at interest. The properties so accumulated, plaintiff alleges and believes, were the community property of the plaintiff and his said wife under the laws of Texas.

V

In the year 1923 the plaintiff gave to his said wife, from the community property aforesaid, eighteen shares of the capital stock of the H. O. Wooten Grocery Company, a Texas corporation, and in the year 1925 likewise gave her six shares of the capital stock of the Abilene Building & Loan Association, and likewise, from time to time, gave her various sums of money, so that she had accumulated, from the portion of said gifts not expended by her, the sum of $500.00, which money she loaned at interest prior to the year 1927. The ownership of said property by the plaintiff's said wife was evidenced by certificate No. 38 for eighteen shares of the capital stock of the H. O. Wooten Grocery Company issued to the said Mrs. Bacon and in her name by the said company on March 14, 1923; by certificate No. 100 for six shares of the capital stock of the Abilene Building & Loan Association issued to the said Mrs. Bacon and in her name by said company on April 25, 1925; and the money

4 loaned at interest was evidenced by a promissory note payable to the said Mrs. Bacon, which loan was made in the year 1926.

VI

In the year 1927 the said Mrs. Bacon, wife of the plaintiff, received and collected from said property the following: A dividend from said stock in the H. O. Wooten Grocery Company of $242.00, a dividend from the said stock of the Abilene Building & Loan Association of $48.00, and interest upon said promissory note of $40.00.

VII

In the year 1927 the plaintiff herein was an officer and director in the Bacon Securities Company, a Texas corporation, and likewise the principal stockholder therein. He devoted the major portion of his time to the management of the affairs of said corporation and, in the year 1927, he received as a salary for the services so rendered in that year the sum of $3,600.00. He was likewise a director in other corporations and earned and received, as director's fees for services rendered such corporations as a director in 1927, the sum of $120.00.

VIII

As the fruits and revenue of the community property aforesaid the plaintiff received, in the year 1927, the following sums:

Interest	$9,261.77
Rents on real estate	5,312.18
Dividends upon shares of stock in various corporations	29,508.40
Oil royalties	78.50

He paid from community funds in the year 1927 the following sums, which he alleges constitute allowable and proper deductions in the calculation of net income under the revenue act of 1926:

Interest	$2,173.51
Taxes	1,459.82
Rental commissions	900.00
Auditor's fees	612.88
Charitable contributions	845.00

In addition to this, proper allowance in the depletion on oil royalties in determining net income was $21.59. These expenses and deductions total $6,012.80.

IX

The items above enumerated constitute all of the income received by either the plaintiff or his wife and all of the expenses and deductions allowable to either of them in the year 1927.

X

The plaintiff and his wife each filed with the defendant, at the time required by law, income-tax returns for the year 1927 in a faithful and bona fide effort to report their said income and pay their income-tax liability thereon as required by the revenue act of 1926. In so doing each reported the entire amount of the interest and dividends so received by the said Mrs. Bacon the salaries and director's
6 fees received by the plaintiff, and the interest, rents, and royalties received as above set forth, and deducted therefrom the expenses and allowances above itemized, and each reported as net taxable income one-half of the remaining sum. The gross income so reported was $48,210.85. The deductions totaled $6,012.80, leaving a balance of $42,198.05, of which each reported one-half, or $21,099.03, as their respective net incomes.

XI

The tax liability of the plaintiff and his wife upon the income as reported by them at the rates provided by the revenue act of 1926 was $336.25 each, and each of them has paid at the time required by law to the defendant one-fourth of said sums, the balance being due in installments which hereafter mature.

XII

After the plaintiff had filed his income-tax return for the year 1927 as above set forth, said return was audited and examined by the Commissioner of Internal Revenue, who determined that the plaintiff's said tax return was incorrect and that the tax liability shown therein insufficient in that, as determined by said Commissioner of Internal Revenue, all of said income—both that reported by the plaintiff and that reported by his wife—should have been reported by the plaintiff and the tax calculated at the rates provided for by the revenue act of 1926 upon one net income of $42,198.05 instead of two net incomes of $21,099.03 each. Said
7 commissioner notified the plaintiff by registered mail of this determination, in accordance with section 274 of the revenue act of 1926, and that he proposed to assess against him a deficiency in income tax for the year 1927 on account thereof amounting to $1,951.88.

XIII

The plaintiff waived the opportunity afforded him to appeal from said determination to the United States Board of Tax Appeals and thereafter, in May, 1928, the said sum, with interest in the sum of $23.69, a total of $1,975.57, was assessed against him by said commissioner and the assessment certified to the defendant for collection, who thereupon made formal notice and demand upon the plaintiff for the payment of said sum.

XIV

The plaintiff paid to the said defendant, on June 6, 1928, the sum so demanded of him and at the time of said payment protested in writing against the collection of said sum and notified the defendant that the said sum was paid only to avoid the imposition of further penalties and interest and the seizure and sale of his property, which would result if the said sum were not paid. Thereafter the plaintiff filed with the defendant a claim for the refunding of said sum in the manner required by law, which claim was based upon the facts and claims herein set forth and this claim was rejected by the Commissioner of Internal Revenue on, to wit, June 11th, 1928.

8 XV

Plaintiff would further show to the court that all of the income so reported by him and his wife for the year 1927 was their community income and property under the laws of the State of Texas and belonged jointly and equally to them and that he is not subject to taxation, under the revenue act of 1926, upon his said wife's one-half of said community income and that the action of the Commissioner of Internal Revenue in adding to the income so reported by him

the share of said community income received and reported by his wife was illegal and erroneous and likewise the assessment and collection of said additional sum as taxes and interest for the year 1927 was imporper, illegal, and erroneous and contrary to the terms and provisions of the revenue act of 1926.

XVI

Plaintiff would further show to the court that the effect and result of the acts and conduct of the defendant, in demanding and collecting from him a tax upon his income plus that of his wife, is to levy and collect a tax upon something not within the meaning of the term "income" as it is used in the sixteenth amendment to to the Consitution of the United States. The major portion of the revenue so included was derived from real estate and invested personal property. The exaction so made of and from plaintiff is a direct tax, not upon income as that term is used in said sixteenth amendment, and is not apportioned among the several States in proportion to any census or enumeration. Therefore, the exaction and collection is in violation of the third clause of section 2 and the fourth clause of section 9 of Article I of the Constitution of the United States, as well as the sixteenth amendment thereto.

XVII

Such exaction and collection was also in violation of section 8 of Article I and the fifth amendment to the Constitution.

XVIII

The revenue act of 1926, if by its terms it provides for and requires that the income from the property of plaintiff and Mrs. Bacon be taxed in the manner and amount exacted of plaintiff by the Commissioner of Internal Revenue, is, as to this plaintiff, unconstitutional and void in that:

(a) It requires the collection from plaintiff of a tax based in whole or in part upon the income of Mrs. Bacon;

(b) It requires the collection from plaintiff at progressive rates of a tax based not upon his income alone, but upon the combined incomes of plaintiff and Mrs. Bacon, thereby not only obliging plaintiff to pay upon an income not his own, but obliging him to pay at a higher rate upon his own income;

(c) It forbids and prohibits plaintiff and Mrs. Bacon from filing separate income-tax returns including therein the income only belonging to and received by them respectively, which is allowed under the revenue act to citizens of other States;

(d) It levies a direct tax upon the real estate and invested personal property owned by plaintiff and Mrs Bacon and the fruits and revenues therefrom, which direct tax is not upon income as the

term is used in the sixteenth amendment to the Constitution, and which is not apportioned among the several States upon the basis of any census or enumeration, and it is also arbitrary and capricious in that it uses as a basis and as the subject of a tax assessed against and collected from plaintiff at progressive rates the combined incomes of himself and Mrs. Bacon of the income only of plaintiff;

(e) It provides for the taking of the property of the plaintiff without due process of law and denies to him the equal protection of the law; and in all of which respects and particulars, as well as in other respects and particulars, violates the third clause of section 2, the first clause of section 8, the fourth clause of section 9, all of Article I of the Constitution of the United States, as well as the fifth and sixteenth amendments to the Constitution of the United States.

XIX

Because of the facts herein alleged, plaintiff is entitled to have and recover from the defendant the taxes and interest so paid, together with interest thereon, as provided by law.

11 Wherefore, premises considered, plaintiff sues, prays for the issuance of citation to the defendant, and that upon final hearing hereof he have judgment against defendant for the taxes and interest so paid, amounting to $1,975.57, together with interest thereon from the date of payment at the rate of 6% per annum, and all costs of suit; that there be issued by the court a certificate of probable cause for the conduct of defendant in his official capacity as aforesaid; and that plaintiff have such other and further relief as he may be entitled to.

THOMPSON, KNIGHT, BAKER & HARRIS,
BAKER, BOTTS, PARKER & GARWOOD,
PALMER HUTCESON,
FULBRIGHT, CROCKER & FREEMAN,
HARRY A. WEEKS,
Attorneys for Plaintiff.

In United States District Court

12 *Defendant's original answer*

Filed June 25, 1928

To the Honorable Wm. H. Atwell, Judge of said Court:

Comes now the defendant, George C. Hopkins, collector of internal revenue, by his counsel and for demurrer and answer to the plaintiff's first amended original petition herein, pleads and shows to the court as follows:

I

The defendant demurs to the said petition and the several allegations made therein and says the same are insufficient in law and show

no cause of action or right to recover against him in any sum, and of this he prays the judgment of the court.

II

If required, for answer herein, the defendant denies all and singular the allegations in said petition contained, and demands strict proof thereof, and says he is not guilty of the wrongs and trespasses, or of any of them, therein alleged against him, and to this he puts himself upon the country and prays to be adjudged to go hence without day with his costs.

NORMAN A. DODGE,
United States Attorney,
Attorney for Defendant.
THOS. H. LEWIS, Jr.,
Special Attorney, Bureau of Internal Revenue,
Of Counsel for Defendant.

13 In United States District Court

Special findings of fact

Filed June 25, 1928

The parties before trial of this cause having made and duly filed stipulation in writing waiving trial by jury, and defendant having appropriately requested special findings of the facts, the court makes and files the following findings of the facts as a part of the primary record upon which the judgment rendered in this cause is based, which special findings shall be filed herein as of June 25, 1928, to wit:

I

Plaintiff, C. W. Bacon, since prior to 1894 has been and is now a citizen of the United States and of the State of Texas, residing in Taylor County, Texas, within the second internal revenue collection district of Texas, and the defendant, George C. Hopkins, was and is the duly qualified and acting collector of the United States for said district since prior to the year 1927, residing in Dallas County, Texas.

II

Plaintiff is and since the year 1894 has been married, during all of which time he and wife, Mrs. C. W. Bacon, have lived together in Texas, and Mrs. Bacon during that period has been and is now a citizen of said State and of the United States.

III

14 Plaintiff's said wife prior to and throughout the year 1927 owned and had possession of the following separate property, the record title to which stood in her name:

18 shares of the capital stock of the H. O. Wooten Grocery Company, a Texas corporation;

6 shares of the capital stock of the Abilene Building & Loan Association, a Texas corporation;

A promissory note for $500.00 bearing 8% interest per annum.

IV

All other property owned by the plaintiff and his said wife, or either of them, prior to and during the year 1927 was their community property under the laws of Texas, and the record titles thereto stood in the name of plaintiff. Said community property consisted of real estate located in Texas, shares of stock in Texas corporations, and in interests in oil, gas, and other minerals in lands situated in Texas and moneys loaned at interest evidenced by promissory notes.

V

The gross income of plaintiff and his wife for the year 1927 was as follows:

(a) $330.00 from the separate property aforesaid of Mrs. Bacon, paid to and received by her; and,

(b) $47,880.85 from the community property aforesaid, paid to and received by plaintiff.

15 Allowable deductions from gross income for said year under the revenue act of 1926 totalled $6,012.80, thus leaving net income subject to taxation before deducting personal exemptions and earned income credit of $42,198.05. None of said income is revenue from homestead property.

VI

Plaintiff and his wife filed separate income-tax returns for the year 1927 in due course, in which they included under proper headings the income and deductions above described; plaintiff in his said return reported one-half of said net income, to wit, $21,099.02, and his said wife reported in her return one-half thereof, and each deducted $1,750.00 (one-half of personal exemption) and the correct earned income credit. The tax liability of plaintiff reported in his return was $336.25 and the tax liability of Mrs. Bacon reported in her return was a like sum. Plaintiff on or before March 15, 1928, paid to the defendant out of community funds one-fourth of the tax reported in his said return. If plaintiff and his wife were entitled to divide income less deductions, exemptions, and credits, their returns were correct and the tax liability of each of them was $336.25 for said year 1927.

VII

The Commissioner of Internal Revenue audited plaintiff's said return for 1927 and determined the same was incorrect in that plaintiff should have reported all of said income and claimed all of said
16 deductions; and plaintiff's wife should have reported none of same; and that the tax should be computed and paid at the rates provided in the revenue act of 1926 upon a net income of $42,198.05 instead of upon two net incomes of one-half said sum. Upon such basis the tax liability of plaintiff for said year would be $1,951.88 in addition to the amount reported on his return, or a total of $2,288.13. The commissioner notified plaintiff of this determination in accordance with law, and plaintiff was afforded opportunity to appeal to the United States Board of Tax Appeals, but waived such right without prejudice to his right to test the matter in the courts, whereupon, the Commissioner in May, 1928, assessed against the plaintiff said additional sum of $1,951.88 as a deficiency tax due for the year 1927 and interest in the sum of $23.69, a total of $1,975.57. Said assessment was duly certified to defendant, who, on May 31, 1928, made formal notice and demand upon plaintiff for payment, and the amount so demanded was paid by the plaintiff to the defendant on June 6, 1928, under protest and to avoid penalties, additional interest, and seizure and sale of property.

VIII

In June, 1928, the plaintiff filed proper claim for refund of said sum, which claim was duly rejected by the Commissioner of Internal Revenue, and this suit was thereafter filed. Plaintiff has complied with all conditions precedent and formal requirements for the prosecution of this suit upon the allegations made in
17 his amended petition, and the court has jurisdiction of the parties and the subject matter herein.

IX

The taxes and interest sued for herein were collected by defendant in manner and form provided by applicable law and regulations, and there was probable cause for said collection and the defendant is entitled to a certificate of probable cause.

X

The stipulation of facts filed by the parties in this cause is hereby adopted by the court as the findings of all other facts.

WM. H. ATWELL.
United States District Judge.

In United States District Court

Stipulation and statement of facts

Filed June 25, 1928

The parties to this proceeding, each acting by and through his attorneys of record, hereby stipulate and agree as follows:

I

Both parties hereby expressly waive a jury and their right to a trial by jury in this case.

II

Both parties admit and agree that the following are true
18 statements of the pertinent facts in this case and this case shall be submitted upon the same as an agreed and admitted statement of facts.

(a) C. W. Bacon, the plaintiff, since prior to 1894, has been and now is a citizen of the United States and of the State of Texas and has resided and now resides in Abilene, Taylor County, Texas in the collection district for the collection of internal revenue of the United States known as the second district of Texas.

(b) George C. Hopkins, the defendant, is the duly appointed, qualified, and acting collector of internal revenue of the United States for said second district of Texas and has been such continuously since prior to the year 1927, and throughout that period and now he has resided and now resides in Dallas, Dallas County, Texas.

(c) Taylor County, Texas, and Dallas County, Texas, both are in the district for the collection of internal revenue of the United States known as the second district of Texas, and also are in the judicial district of the United States known as the northern district of Texas.

(d) The taxes and interest sued for in this proceeding were paid by plaintiff to defendant in defendant's official capacity. His action in demanding and collecting such taxes and interest was in accordance with the instructions of his superior officers, duly appointed, qualified and acting. There was probable cause for this action
19 on his part, and in the event of a decision in this case adverse to him he is entitled to a certificate of probable cause.

(e) The plaintiff married his present wife in the year 1894. He and his said wife have maintained the marriage relation continuously since that time, during all of which they have lived together in the State of Texas. Mrs. Bacon, throughout such period and now, has been and is a citizen of the United States and of the State of Texas.

(f) Mrs. C. W. Bacon, the wife of plaintiff, prior to and throughout the year 1927, owned and had possession of the following separate property, the record title to which stood in her name:

1. Eighteen (18) shares of the capital stock of the H. O. Wooten Grocery Company, a Texas corporation.

2. Six (6) shares of the capital stock of the Abilene Building & Loan Association, a Texas corporation.

3. A promissory note in the principal sum of five hudred dollars ($500.00), bearing interest at the rate of eight per cent (8%) per annum.

The H. O. Wooten Grocery Company stock was given to Mrs. Bacon by her husband, the plaintiff, from community property in the year 1923. Her ownership is evidenced by certificate No. 38, issued to her and in her name by that company on March 14, 1923.

20 The Abilene Building & Loan Association stock was given to Mrs. Bacon by her husband, the plaintiff, from community property in the year 1925. Her ownship is evidenced by certificate No. 100, issued to her and in her name by that association on April 25, 1925. The promissory note is payable to her and represents a loan made by her out of money, her separate property, given to her by her husband, the plaintiff, out of community funds prior to the year 1927.

(g) All other property owned by the plaintiff and his said wife, or either of them, prior to or during the year 1927 was their community property under the laws of Texas, and the record title thereto stood in the name of plaintiff. With the exception of gifts from plaintiff to Mrs. Bacon outlined in subdivision (f) above, neither plaintiff nor his wife ever acquired any property by gift, devise, or descent, and neither of them had any property at the time of their marriage. All said community property prior to and throughout the year 1927 consisted of real estate located in Texas, shares of stock in Texas corporations, and interest in the oil, gas, and other minerals in and under lands in Texas termed an oil royalty and money loaned at interest, which loans were evidenced by promissory notes.

(h) The entire gross income in and for the year 1927 of plaintiff and his wife, and each of them, which was taxable under the revenue laws of the United States was as follows:

21 1. Interest from the loan of community funds as aforesaid	$9,261.77	
2. Interest from the loan of separate funds of Mrs. Bacon as aforesaid	40.00	
Total interest		$9,301.77
3. Dividends from shares of capital stock of the corporations, which shares were community property as aforesaid	$29,508.40	
4. Dividends from shares of capital stock of Texas corporations, which shares were the separate property of Mrs. Bacon as aforesaid	290.00	
Total dividends		$29,798.40

5. Rents from the leasing of real estate in Texas, which real estate was community property as aforesaid	$5,312.18
6. Royalties from oil produced from real estate in Texas, which real estate was community property as aforesaid	78.50
7. Plaintiff was an officer and director in Bacon Securities Company, a Texas corporation, and prior to and throughout the year 1927 owned about 60% of the stock in that corporation. He devoted the major portion of his time in the year 1927 to its affairs and from it received in the year 1927 a salary for his services in that year of	3,600.00
8. Plaintiff was a director in that and other corporations in that year and earned in that year, as director's fees, for his services in attending upon meetings of board of directors of such corporations, the sum of	120.00
Total gross income	$48,210.85

(i) Included in the dividends and interest in the foregoing schedule of income are the dividends and interest which were paid Mrs. Bacon upon her separate property mentioned above. In 1927 she was paid, as dividend upon her stock in the H. O. Wooten Grocery Company, $242.00; upon her stock in the Abilene Building & Loan Association $48.00, making total dividends of $290.00, and as interest upon her promissory note, $40.00. These moneys were all paid to her.

(j) Plaintiff paid from the community funds, in the year 1927, the following, which constitute allowable deductions from gross income for the year 1927 under the revenue act of 1926:

Interest	$2,173.51
Taxes	1,459.82
Rental commissions	900.00
Auditor's and accounting fees	612.88
Depletion through oil withdrawals	21.59
Contributions	845.00
Total deductions	$6,012.80
Net income subject to taxation before deducting personal exemptions and earned income credit	$42,198.05

(k) Plaintiff and his wife each filed separate income-tax return with the defendant for the year 1927; they were filed in due course; the defendant was the proper collector with whom the same should have been filed; they were on Form 1040, furnished to taxpayers by the Bureau of Internal Revenue: copies of these returns are attached hereto as Exhibits "A" and "B," respectively, and are made part hereof for all purposes; in each return there were included, under proper headings, the revenues above described (derived from community property and from the separate property of Mrs. Bacon), which totaled $48,210.85, from which there was subtracted the deductions above itemized, totaling $6,012.80, leaving a net amount of $42,198.05 before deducting personal exemptions and earned income credit. From the said sum of $42,198.05 the plaintiff in his return deducted amounts as follows: One-half of total $21,099.02, because reported and paid on by Mrs. Bacon; one-half of personal exemption of $1,750.00, and earned income credit in small but correct amount. The tax liability of plaintiff as shown by his said return was $336.25.

The tax liability of Mrs. Bacon was arrived at in the same manner, was based on the same figures, and was $336.25. Plaintiff, on or before March 15, 1928, paid to the defendant out of community funds one-fourth of said taxes disclosed upon his returns
24 herein described. If plaintiff and his wife were entitled to divide income less deductions, exemptions, and credits, as above described, their returns were correct and the tax liability of each of them thereon was $336.25.

(l) Upon auditing the said tax return for 1927, filed by the plaintiff, the Commissioner of Internal Revenue determined that the same was incorrect in that, according to the determination of the commissioner, the plaintiff should have reported all of said income and claimed all of said deductions, and the plaintiff's wife should have reported none of same, and the tax should be computed and paid at the rates provided in the revenue act of 1926 upon a net income of $42,198.05, instead of upon two net incomes of one-half of said sum. Under such a theory the tax liability of the plaintiff for 1927 would be $1,951.88, in addition to the amount shown on said return, or a total of $2,288.13. The Commissioner of Internal Revenue notified plaintiff of this determination in accordance with the provisions of section 274 of the revenue act of 1926, and afforded the plaintiff an opportunity to appeal from this determination to the United States Board of Tax Appeals. The plaintiff waived this right, but without prejudice to his right to test the matter in the courts; whereupon the Commissioner of Internal Revenue assessed against the plaintiff in May, 1928, said additional sum of $1,951.88, as a deficiency in income tax due by him for the year 1927, and interest in the sum of $23.69, a total of $1,975.57. Said assessment was certified to the
25 defendant who, upon May 31, 1928, made formal notice and demand upon the plaintiff for the payment of said sum. A copy of the notice of the determination of a deficiency mailed by the Commissioner of Internal Revenue to the plaintiff, as above set forth, is attached hereto and marked "Exhibit C" and hereby made part hereof for all purposes.

(m) The amount so demanded by the defendant from the plaintiff was paid by the plaintiff to the defendant on June 6, 1928. This payment was made under protest and in order to avoid the penalties, additional interest, and seizure and sale of property which would ensue if the demand had not been complied with.

(n) On June , 1928, the plaintiff filed with the defendant a claim for the refunding of said sum. A copy of this claim is hereto attached, marked "Exhibit D," and hereby made a part hereof for all purposes. This claim was rejected by the Commissioner of Internal Revenue on June , 1928, whereupon this suit was instituted.

(o) The plaintiff has complied with all of the conditions precedent, and other formal requirements of the statutes and rules relating to this right to institute and prosecute this suit in the manner and upon the grounds alleged in his pleadings herein, and

all informalities, if any, are waived. The defendant and the other officers of the United States have complied with all formal
26 requirements of the statutes and regulations in making the deficiency assessments, in collecting the same, and in rejecting plaintiff's claim for refund.

III

It is further agreed that upon trial of this cause either party hereto may specify for the record, or introduce in evidence, copies of any or all of the documents or proceedings described and referred to in Exhibit E, hereto attached and made a part hereof, subject to all legal objections offered by any other party except that of proof of execution, certification, and or proof of authenticity, all of which are hereby waived; but nothing in this stipulation shall be considered as a limitation upon the right of the court to take judicial notice of such matters as under the law may properly be made the subject of such judicial notice.

IV

Upon the trial of this cause, either party hereto may offer any such additional evidence as may be considered by such party to be pertinent, subject to all legal objections by any other party.

V

This agreement and stipulation shall, upon its execution, be filed in this cause and become a part of the record in the same.
27 In witness whereof the attorneys of record of the respective parties have executed this agreement this 25th day of June, A. D. 1928.

BAKER, BOTTS, PARKER & GARWOOD,
THOMPSON, KNIGHT, BAKER & HARRIS,
FULBRIGHT, CROOKER & FREEMAN,
WEEKS, MORROW, FRANCES & HANKERSON,
Attorneys for Plaintiff.
NORMAN A. DODGE, *U. S. Atty.*,
THOS. H. LEWIS, Jr.,
Attorneys for Defendant.

Exhibit E to stipulation and statement of facts

List of documents referred to in Paragraph III of the attached agreement.

1. Excerpts from the following proceedings before the Sixty-sixth Congress on the revenue act of 1921 in so far as same refer to the subject of community income or proposed legislation with respect thereto:

(a) Bill as originally introduced.

(b) Bill as reported by the Ways and Means Committee of the House of Representatives.

(c) Bill as adopted by the House of Representatives.

(d) Bill as reported by the Finance Committee of the Senate.

(e) Report of the Finance Committee to the Senate.

28 (f) Debate and discussion on the floor of the Senate, as disclosed by the Congressional Record.

(g) Bill as adopted by the Senate.

(h) Bill as finally enacted.

2. Excerpts from the following proceedings before the Sixty-eighth Congress on the revenue act of 1924 in so far as same refer to the subject of community income or proposed legislation with respect thereto:

(a) Bill as originally introduced.

(b) Printed proceedings before Ways and Means Committee.

(c) Bill as reported by the Ways and Means Committee of the House of Representatives.

(d) Proceedings shown in the Congressional Record.

3. Excerpts from proceedings before the Sixty-ninth Congress in so far as the same refer to community income or legislation with respect thereto:

(a) Amendment to H. R. No. 1 submitted by Senator Wesley M. Jones, of the State of Washington, on the floor of the Senate on February 25, 1926.

(b) Section 1212 of H. R. No. 1, as adopted by the Senate on February 25, 1926.

(c) Report of the conferees upon H. R. No. 1.

Documentary evidence introduced by counsel for plaintiff under provisions of Exhibit E in stipulation filed in the above cause:

29 1. (a) The following clause was included in the revenue act of 1921 as introduced in the House of Representatives.

"Income received by any community shall be included in the gross income of the spouse having the management and control of the community property."

(b) The bill as reported by the Ways and Means Committee of the House contained the same clause copied under subdivision (a).

(c) The bill as passed by the House of Representatives contained the same clause as is copied under subdivision (a).

(d) The revenue act of 1921 as reported by the Finance Committee to the Senate substituted for the clause shown in subdivision (a) above the following clause:

"Income received by any marital community shall be included in the gross income of the spouse having the management and control of the community property and shall be taxed as the income of such spouse."

(e) In making its report to the Senate the Finance Committee discussed the foregoing provisions in the following language, as shown at page 14 of its report:

"Under an opinion of the attorney general, residents of States having a community property law enjoyed marked advantages over residents of other States. Income which in other States is taxes as a unit to the husband is divided between husband and wife in
States having community property laws, and the surtaxes are
30 correspondingly reduced. An amendment is added to this
section designed to restore uniformity of treatment by providing that income received by any marital community shall be included in the gross income of the spouse having the management and control of the community property, and shall be taxed as the income of such spouse."

(f) In view of the ruling of the court evidence preferred under subdivision (f) is withdrawn.

(g) The bill as adopted by the Senate eliminated the provision shown under subdivision (d) above.

(h) The bill as finally enacted contained no specific reference to community income.

2. (a) In committee print No. 1 of the revenue act of 1924 as introduced in the Sixty-eighth Congress and filed on December 17, 1923, was entitled as follows:

"The revenue act of 1924, containing proposed amendments to the existing law suggested by the Secretary of the Treasury."

At page 58 of the bill there was included what was described as new matter the following provision:

"Income received by any marital community shall be included in the gross income of the spouse having the management and control of the community property and shall be taxed as the income of such spouse."

(b) In view of the objections made by counsel for defendant the evidence proffered under subdivision (b) hereof is hereby withdrawn.

31 (c) The bill as reported by the Ways & Means Committee to the House of Representative eliminated the provisions shown under subdivision (a) hereof and contained no reference to the community income.

(d) In view of the ruling of the court the evidence proffered under subdivision (d) hereof is hereby withdrawn.

3. (a) The Senate amendment No. 204 to the revenue act of 1926, as originally passed by the House, read as follows:

"Retroactive regulations—Sec. 1213. The liability of any taxpayer under any internal revenue law shall be determined (unless such taxpayer otherwise consents or requests) in accordance with the Treasury decisions, opinions of the Attorney General and regulations made by the commissioner or by the Secretary, or by the commissioner with the approval of the Secretary, in force at the time his return was made, whether such return was made before or after the enactment of this act. As used in this subdivision, the

term 'return' means, in the case of a return which has been amended, the return as finally amended."

(b) A conference report, No. 356, reflects the following proceedings agreed to by the conference committees of the House and Senate (page 29):

"Amendment numbered 204.

"That the House recede from its disagreement to the amendment of the Senate numbered 204, and agree to the same with an amendment as follows:

"In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

32 Community property

"'SEC. 1212. Income for any period before January 1, 1925, of a marital community in the income of which the wife has a vested interest as distinguished from an expectancy, shall be held to be correctly returned if returned by the spouse to whom the income belonged under the State law applicable to such marital community for such period. Any spouse who elected so to return such income shall not be entitled to any credit or refund on the ground that such income should have been returned by the other spouse and a period.'

"And the Senate agree to the same."

(c) The recommendation of the conference committees as above reflected was adopted by the Senate and House.

(d) As a part of the conference report there was attached a "Statement of the managers on the part of the House." It contained the following language (pages 59–60):

"Amendment No. 204. This amendment was intended to provide for retroactive validation of all Treasury decisions, opinions of the Attorney General, and regulations of the Treasury Department made under prior revenue acts; it provided that the liability of any taxpayer under any internal revenue law should be determined in accordance with the Treasury decision, opinion of the Attorney General, and Treasury regulations in force at the time the taxpayers' return was made. The House recedes with an amendment striking out the Senate provision, and inserting a section providing
33–34 that income for any period before January 1, 1925, of a marital community in the income of which the wife has a vested interest as distinguished from an expectancy, shall be held to be correctly returned if returned by the spouse to whom the income belonged under the State law applicable to such marital community for such period. The section as agreed to also provides that any spouse who elects so to return such income shall not be entitled to refund on the ground that such income should have been returned by the other spouse."

UNITED STATES OF AMERICA

Exhibit A to stipulation and statement of facts

TREASURY DEPARTMENT,
Washington, August 2, 1928.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of individual income tax return for 1927, filed by C. W. Bacon, Abilene, Texas, the originals of which are on file in this department.

In witness whereof, I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

By direction of the Secretary.

[SEAL.] F. A. BIRGFELD,
Chief Clerk, Treasury Department.

39–40 UNITED STATES OF AMERICA

Exhibit B to stipulation and statement of facts

TREASURY DEPARTMENT,
Washington, August 2, 1928.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of individual income tax return for 1927, filed by Mrs. C. W. Bacon, Abilene, Texas, the originals of which are on file in this department.

In witness whereof, I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

By direction of the Secretary.

[SEAL.] F. A. BIRGFELD,
Chief Clerk, Treasury Department.

45–46 OFFICE OF COMMISSIONER OF INTERNAL REVENUE

TREASURY DEPARTMENT,
Washington, May 9, 1928.

Mr. C. W. BACON,
Abilene, Texas.

SIR: In accordance with section 274 of the revenue act of 1926 you are advised that the determination of your tax liability for the year 1927 discloses a deficiency of $1,951.88, as shown in the attached statement.

The section of the law above mentioned allows you an appeal to the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter. However, if you acquiesce in this determination, you are requested to execute the inclosed Form A and

3 Computation

Form 1040
U. S. INTERNAL REVENUE
(Auditor's Stamp)

ACCEPTED 6-28

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
OR INCOMES, REGARDLESS OF AMOUNT, FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1927

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1928

Do Not Write in These Spaces

File Code 32

Serial Number 300422
(Cashier's Stamp)

ACCEPTED
WED
HAN
1928

(PRINT NAME AND ADDRESS PLAINLY BELOW)

C. W. BACON
(Name)

2-724
(Street and number, or rural route)

ABILENE, TEXAS
(Post office) (County) (State)

Cash Check M. O. Cert. of Dep.
First Payment
$ 84.07
Carded

Occupation, Profession, or Business As

1. Are you a citizen or resident of the United States? YES
2. If you filed a return for 1926, to what Collector's office was it sent? DALLAS
3. Is this a joint return of husband and wife? NO - COMMUNITY
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent MRS. C.W. BACON, SAME ADDRESS
5. Were you married and living with husband or wife on the last day of your taxable year? YES
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change.
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? NONE

44

Item and Instruction No.	INCOME	Amount received	Expenses paid (Explain in Schedule F)				
7	1. Salaries, Wages, Commissions, etc. (State name and address of person from whom received) Bacon Securities Co., Abilene, Texas	$	$	$	3	600	00
	Directors Fees					120	00
20	2. Income from Business or Profession. (From Schedule A)						
	3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)				9	301	77
	(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source						
	4. Income from Partnerships. (State name and address)						
	(c) Income from Fiduciaries. (State name and address)						
	5. Rents and Royalties. (From Schedule B)				5	312	18
	6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)						
	7. Dividends on Stock of Domestic Corporations				29	798	40

8. Taxable Interest on Liberty Bonds, etc. (From Schedule F)										
9. Other Income (including dividends received on stock of foreign corporations). (State source of income)										
(a) Oil Royalties							78	50		
(b)										
10. TOTAL INCOME IN ITEMS 1 TO 9									$ 48	210 85
DEDUCTIONS										
11. Interest Paid							173	51		
12. Taxes Paid. (Explain in Schedule F)							1 459	88		
13. [redacted] Rental Commissions Paid							900	00		
14. [redacted] Auditors for defending Income Tax Case							612	88		
15. Contributions. (Explain in Schedule F)							845	00		
16. Other Deductions Authorized by Law. (Explain in Schedule F) Depletion on Oil Royalties							21	59		
17. TOTAL DEDUCTIONS IN ITEMS 11 TO 16									$ 6 012	80
18. NET INCOME (Item 10 minus Item 17)									$ 42 198 05 / 21 099 02	
									$ 21,099.03	

COMPUTATION OF TAX (See Instruction 21)

19. Earned Net Income (not over $20,000)	$5,000	00	31. Net Income (Item 18 above)	$21,099	03	42. Normal Tax (1½% of Item 38)	$ 60	00
20. Less Personal Exemption and Credit for Dependents (see Instruction 20)	1,750	00	32. Less Dividends (Item 7 above)	$4899	20	43. Normal Tax (3% of Item 40)	13	49
21. Balance (Item 19 minus 20)	$3,250	00	33. Interest on Liberty Bonds, etc. (Item 8)			44. Normal Tax (5% of Item 41)		
22. Amount taxable at 1½% (not over the first $4,000 of Item 21)	$3,250	00	34. Personal Exemption	1750	00	45. Surtax on Item 18 (see Instruction 21)	274	95
23. Amount taxable at 3% (not over the second $4,000 of Item 21)	-o-		35. Credit for Dependents			46. Tax on Net Income (total of Items 42, 43, 44, and 45)	$ 348	44
24. Amount taxable at 5% (balance over $8,000 of Item 21)			36. Total of Items 32, 33, 34, and 35	16,649	20	47. Less Credit of 25% of Tax on Earned Net Income (Item 30)	12	19
25. Normal Tax (1½% of Item 22)	$ 48	75	37. Balance (Item 31 minus 36)	$ 4,449	83	48. Balance (Item 46 minus 47)	$ 336	25
26. Normal Tax (3% of Item 23)			38. Amount taxable at 1½% (not over the first $4,000 of Item 37)	4,000	00	49. Adjustment for Capital Gain or Loss (12½% of Column 9, Schedule D)		
27. Normal Tax (5% of Item 24)			39. Balance (Item 37 minus 38)	$ 449	83	50. Total Tax (total of or difference between Items 48 and 49)	$	
28. Surtax on Item 19 (see Instruction 21)			40. Amount taxable at 3% (not over the second $4,000 of Item 37)	449	83	51. Less Income Tax Paid at Source		
29. Tax on Earned Net Income (total of Items 25, 26, 27, and 28)	$ 48	75	41. Amount taxable at 5% (balance over $8,000 of Item 37)	$ -o-		52. Income and Profits Taxes paid to a foreign country or U. S. possession		
30. Credit of 25% of Item 29 (not over 25% of Items 28, 42, 43, and 44)	$ 12	19				53. Balance of Tax (Item 50 minus Items 51 and 52)	$ 336	25

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1926, and the Regulations issued under authority thereof.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 2d day of March, 1928.

NOTARIAL SEAL

A. M. Boyd Jr. (Signature of officer administering oath) , Notary Public (Title)

O. W. Dobson (Signature of individual or agent)

Abilene Texas (Address of agent)

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable at par

a1

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business) ..... $

Cost of Goods Sold

2. Labor ..... $
3. Material and supplies .....
4. Merchandise bought for sale .....
5. Other costs (itemize below or on separate sheet) .....
6. Plus inventory at beginning of year .....
7. Total (Lines 2 to 6, inclusive) ..... $
8. Less inventory at end of year .....
9. Net Cost of Goods Sold (Line 7 minus Line 8) ..... $

Note.—Do not deduct here or elsewhere compensation for your services

Other Business Deductions

10. Salaries, exclusive of "Labor," reported on Line 2, and exclusive of compensation for your services ..... $
11. Interest on business indebtedness to others .....
12. Taxes on business and business property .....
13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page) .....
14. Bad debts arising from sales or services .....
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page) .....
16. Rent, repairs, and other expenses (itemized below or on separate sheet) .....
17. Total (Lines 10 to 16, inclusive) ..... $
18. Total Deductions (Line 9 plus Line 17) ..... $
19. Net Profit (Line 1 minus Line 18) (Enter as Item 2) ..... $

Explanation of deductions claimed on Lines 5 and 16 .....

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table at foot of page)	6. Repairs	7. Other Expenses (Itemize below)	8. Net Profit (Enter as Item 5)
Abilene Candy Co. Bldg.	$ 3,600 00	$ 19,000 00	$ -0-	$ 760 00	$	$ 193 50	$ 2,646 50
Bldg. on Lot 7 & 8 Pine St.	1,968 75	7,500 00	-0-	215 00		215 25	1,538 50
Morse Bldg.	2,087 50	20,000.00	-0-	600 00		360 32	1,127 18
	$ 7,656 25			$ 1,575 00		$ 769 07	$ 5,312 18

Explanation of deductions claimed in Column 7 .....

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable Since Acquisition	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter as Item 6)
		$	$	$	$	$	$

State how property was acquired .....

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Depreciation Allowable Since Acquisition	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements, and Capital Deductions	9. Net Gain or Loss (Enter 12½% as Item 49)
	Mo. Day Year	*Mo. Day Year*	$	$	$	$	$	$

State how property was acquired .....

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. Obligations or Securities	2. Interest Received or Accrued	3. Amount Owned	4. Principal Amount Exempt From Taxation	5. Amount Owned in Excess of Exemption	6. Interest on Amount in Excess of Exemption (Enter as Item 8)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	XXXXXX XX	XXXXXX XX
(b) Securities issued under Federal Farm Loan Act, or under such Act as Amended			All	XXXXXX XX	XXXXXX XX
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States			All	XXXXXX XX	XXXXXX XX
(d) Liberty 4% and 4¼% Bonds, Treasury 3⅛%, 3¾%, 4%, and 4¼% Bonds, Treasury Certificates of Indebtedness, and Treasury (War) Savings Certificates			$5,000	$	$
(e) Treasury Notes			None		

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, 15, AND 16

Schedule B - Item 7:

Insurance	$ 463.87	
Repairs	215.25	
Janitor Service	89.95	$ 769.07

Donations:

Boy Scouts $25.00, Salvation Army $20.00, Welfare Association $25.00
Orphans Home $25.00, First Christian Church $750.00

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost (Exclusive of Land)	6. Value as of March 1, 1913 (Exclusive of Land)	Amount of Depreciation Charged Off	
						7. Previous years	8. This year
				$	$	$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Subsequent Improvements	6. Depreciation Allowable Since Acquisition	7. Insurance and Salvage Value	8. Deductible Loss
		$	$	$	$	$	$

3—14446

a 2.

Computation Moved

Form 1040
U. S. Internal Revenue
(Auditor's Stamp)

APR 25 1928

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
OR INCOMES, REGARDLESS OF AMOUNT, FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1927

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1928

Do Not Write in These Spaces

File Code 32-1

Serial Number 300423

(Cashier's Stamp)

PRINT NAME AND ADDRESS PLAINLY BELOW)

MRS. C. W. BACON
(Name)

(Street and number, or rural route)

ABILENE, TEXAS
(Post office) (County) (State)

Occupation, Profession, or Business

Cash Check M. O. Cert. of Int. 07
First Payment 84

$
Carded

As

1. Are you a citizen or resident of the United States? YES
2. If you filed a return for 1926, to what Collector's office was it sent? DALLAS
3. Is this a joint return of husband and wife? NO - COMMUNITY
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent MR. C.W.BACON, SAME ADDRESS
5. Were you married and living with husband or wife on the last day of your taxable year? YES
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? NONE

INCOME

Item and Instruction No.		Amount received	Expenses paid (Explain in Schedule F)						
1	Salaries, Wages, Commissions, etc. (State name and address of person from whom received)								
	Bacon Securities Co., Abilene, Texas	$	$	$	3	600	00		
	Directors Fees					120	00		
2	Income from Business or Profession. (From Schedule A)								
3	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)				9	301	77		
	(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source								
4	Income from Partnerships. (State name and address)								
	(a) Income from Fiduciaries. (State name and address)								
5	Rents and Royalties. (From Schedule B)				5	312	18		
6	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)								
7	Dividends on Stock of Domestic Corporations				29	798	40		

5. Rents and Royalties. (From Schedule B)			5	312	16			
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)								
7. Dividends on Stock of Domestic Corporations			29	798	40			
8. Taxable Interest on Liberty Bonds, etc. (From Schedule E)								
9. Other Income (including dividends received on stock of foreign corporations). (State nature of income)								
(a) Oil Royalties				78	50			
(b)								
10. TOTAL INCOME IN ITEMS 1 TO 9						$	48 210	85
DEDUCTIONS								
11. Interest Paid	$	2	173	51				
12. Taxes Paid. (Explain in Schedule F)		1	459	82				
13. [illegible] Rental Commissions Paid			900	00				
14. [illegible] Auditors for defending Income Tax Case			612	88				
15. Contributions. (Explain in Schedule F)			845	00				
16. Other Deductions Authorized by Law. (Explain in Schedule F) Depletion on Oil Royalties			21	59				
17. TOTAL DEDUCTIONS IN ITEMS 11 TO 16						$	6 012	80
18. NET INCOME (Item 10 minus Item 17) Less - 1/2 reported by Husband						$	42 198 / 21 099	05 / 02
						$	21,099.03	

COMPUTATION OF TAX (See Instruction 21)

19. Earned Net Income (not over $20,000)	$	5,000	00	31. Net Income (Item 18 above)			$ 21,099	03	42. Normal Tax (1½% of Item 38)	$	60	00
20. Less Personal Exemption and Credit for Dependents (see Instruction 20)		1,750	00	32. Less Dividends (Item 7 above)	$	14899 20			43. Normal Tax (3% of Item 40)		13	49
21. Balance (Item 19 minus 20)	$	3,250	00	33. Interest on Liberty Bonds, etc. (Item 8)					44. Normal Tax (5% of Item 41)			
22. Amount taxable at 1½% (not over the first $4,000 of Item 21)	$	3,250	00	34. Personal Exemption		1750 00			45. Surtax on Item 18 (see Instruction 21)		274	95
23. Amount taxable at 3% (not over the second $4,000 of Item 21)		-0-		35. Credit for Dependents					46. Tax on Net Income (total of Items 42, 43, 44, and 45)	$	348	44
24. Amount taxable at 5% (balance over $8,000 of Item 21)				36. Total of Items 32, 33, 34, and 35			16,649	20	47. Less Credit of 25% of Tax on Earned Net Income (Item 30)		12	19
25. Normal Tax (1½% of Item 22)	$	48	75	37. Balance (Item 31 minus 36)			$ 4,449	83	48. Balance (Item 46 minus 47)	$	336	25
26. Normal Tax (3% of Item 23)				38. Amount taxable at 1½% (not over the first $4,000 of Item 37)			4,000	00	49. Adjustment for Capital Gain or Loss (12½% of Column 9, Schedule D)			
27. Normal Tax (5% of Item 24)				39. Balance (Item 37 minus 38)			$ 449	83	50. Total Tax (total of or difference between Items 48 and 49)	$		
28. Surtax on Item 19 (see Instruction 21)				40. Amount taxable at 3% (not over the second $4,000 of Item 37)			449	83	51. Less Income Tax Paid at Source			
29. Tax on Earned Net Income (total of Items 25, 26, 27, and 28)	$	48	75	41. Amount taxable at 5% (balance over $8,000 of Item 37)			$ -0-		52. Income and Profits Taxes paid to a foreign country or U. S. possession			
30. Credit of 25% of Item 29 (not over 25% of Items 28, 42, 43, and 44)	$	12	19						53. Balance of Tax (Item 50 minus Items 51 and 52)	$	336	25

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1926, and the Regulations issued under authority thereof.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 2nd day of March, 1928.

Mrs C. H. Bacon
(Signature of individual or agent)

NOTARIAL SEAL

A. M. Buzzard Jr. / Notary Public in and for Taylor Co
(Signature of officer administering oath) (Title)

Abilene Texas,
(Address of agent)

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable at par

B-1

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business) ..... $

Cost of Goods Sold

2. Labor ..... $
3. Material and supplies .....
4. Merchandise bought for sale .....
5. Other costs (itemize below or on separate sheet) .....
6. Plus inventory at beginning of year .....
7. Total (Lines 2 to 6, inclusive) ..... $
8. Less inventory at end of year .....
9. Net Cost of Goods Sold (Line 7 minus Line 8) ..... $

Note.—Do not deduct here or elsewhere compensation for your services

Other Business Deductions

10. Salaries, exclusive of "Labor," reported on Line 2, and exclusive of compensation for your services ..... $
11. Interest on business indebtedness to others .....
12. Taxes on business and business property .....
13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page) .....
14. Bad debts arising from sales or services .....
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page) .....
16. Rent, repairs, and other expenses (itemized below or on separate sheet) .....
17. Total (Lines 10 to 16, inclusive) ..... $
18. Total Deductions (Line 9 plus Line 17) ..... $
19. Net Profit (Line 1 minus Line 18) (Enter as Item 2) ..... $

Explanation of deductions claimed on Lines 5 and 16 .....

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table at foot of page)	6. Repairs	7. Other Expenses (Itemize below)	8. Net Profit (Enter as Item 5)
Abilene Candy Co. Bldg.	$ 3,600 00	$ 19,000 00	$ -0-	$ 760 00	$	$ 193 50	$ 2,646 50
Bldg. on Lot 7 & 8, Pine St.	1,968 75	7,500 00	-0-	215 00		215 25	1,538 50
Morse Bldg.	2,087 50	20,000 00	-0-	600 00		360 32	1,127 18
	$ 7,656 25			$ 1,575 00		$ 769 07	$ 5,312 18

Explanation of deductions claimed in Column 7 .....

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable Since Acquisition	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter as Item 6)
		$	$	$	$	$	$

State how property was acquired .....

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Depreciation Allowable Since Acquisition	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements, and Capital Deductions	9. Net Gain or Loss (Enter 12½% as Item 49)
	Mo. Day Year	Mo. Day Year	$	$	$	$	$	$

State now property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. Obligations or Securities	2. Interest Received or Accrued	3. Amount Owned	4. Principal Amount Exempt From Taxation	5. Amount Owned in Excess of Exemption	6. Interest on Amount in Excess of Exemption (Enter as Item 8)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	x x x x x x	x x x x x x
(b) Securities issued under Federal Farm Loan Act, or under such Act as Amended			All	x x x x x x	x x x x x x
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States			All	x x x x x x	x x x x x x
(d) Liberty 4% and 4¼% Bonds, Treasury 3⅜%, 3¾%, 4%, and 4¼% Bonds, Treasury Certificates of Indebtedness, and Treasury (War) Savings Certificates			$5,000	$	$
(e) Treasury Notes			None		

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, 15, AND 16

Schedule B - Item 7:

Insurance	$ 463.87	
Repairs	215.25	
Janitor Service	89.95	$ 769.07

Donations:

Boy Scouts $25.00, Salvation Army $20.00, Welfare Assn. $25.00, Orphans Home $25.00, First Christian Church $750.00

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost (Exclusive of Land)	6. Value as of March 1, 1913 (Exclusive of Land)	Amount of Depreciation Charged Off	
						7. Previous years	8. This year
				$	$	$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Subsequent Improvements	6. Depreciation Allowable Since Acquisition	7. Insurance and Salvage Value	8. Deductible Loss
		$	$	$	$	$	$

3—14446

B-2

forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT: C: P-7.

Respectfully,

D. H. BLAIR,
Commissioner.

By (Signed) C. B. ALLEN,
Deputy Commissioner.

Inclosures:
Statement.
Form A.
Form 882.

47-48 Statement

IT:E:RR
RJB

In re: Mr. C. W. Bacon, Abilene, Texas

Year	Deficiency
1927	$1,951.88

In accordance with the provisions of Treasury Decision No. 3817 (CB V-1, page 188), it is held by this office that you are subject to taxation upon the entire income received in the taxable year from community property and that the filing of a separate return by your wife for her interest in such income is not warranted under the law.

The tax liability, therefore, has been recomputed as follows:

Net income as reported upon the return		$42,198.05
Less:		
Dividends	$29,798.40	
Personal exemption	3,500.00	33,298.40
Balance subject to normal taxes		$8,899.65
Normal taxes:		
$4,000.00 at 1½%		$60.00
4,000.00 at 3%		120.00
899.65 at 8%		71.97
		$251.97
Earned income credit:		
Earned net income		$5,000.00
Less:		
Personal exemption		3,500.00
Balance		$1,500.00
Normal tax at 1½%		$22.50
Credit or 25%		$5.63
49-50 Tax liability:		
Surtax on $42,198.05		$2,041.79
Normal taxes		251.97
Total		$2,293.76

Less:	
Earned income credit	$5.63
Tax liability	$2,288.13
Tax liability reported on return	336.25
Deficiency	1,951.88

57 In United States District Court

Final judgment

Filed June 28, 1928

This day, this cause coming on to be heard, came both parties, plaintiff and defendant, by their respective attorneys, and announced ready for trial, and a jury being expressly waived and all matters at issue, of fact as well as of law, being to the court submitted, the court, having heard the pleadings, the evidence, and the argument of counsel, is of the opinion that the law is for the plaintiff.

It is accordingly considered, adjudged, and decreed that plaintiff, C. W. Bacon, do recover of and from George C. Hopk'ns who is collector of internal revenue of the United States in and for the collection district known as the second district of Texas, the sum of one thousand nine hundred seventy-five dollars fifty-seven cents ($1,975.57) with interest thereon from this date at the rate of six per cent (6%) per annum, together with all costs of this suit.

It is further considered, adjudged, and decreed by the court that the taxes and interest sued for in this proceeding were paid by plaintiff, C. W. Bacon, to defendant, George C. Hopkins, in defendant's official capacity, as aforesaid; that the action of defendant in demanding and collecting such taxes and interest was in accordance with the instructions of his superior officers, duly appointed, qualified, and acting; that there was probable cause for his action in demand-
58 ing and collecting such taxes; and that he is entitled to a certificate herein of probable cause, which hereby is given him.

It is further considered, adjudged, and decreed that the officers of the court do have of, and recover from, the parties hereto, respectively, the costs by each of such parties respectively incurred.

It is further considered, adjudged, and decreed that all process necessary and appropriate for the enforcement of this judgment issue.

To which judgement the defendant in open court excepted, and upon his application the court allowed and defendant is hereby granted sixty days after adjournment of the present Dallas term of court within which to settle and file bill of exceptions and do all other things and procure proper orders for completion of the record for effective appeal from this judgment.

WM. H. ATWELL,
United States District Judge.

(EXECUTE SEPARATE FORM FOR EACH TAX PERIOD)

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
FORM 843—Jan., 1923
Comptroller General U. S.
January 18, 1922

CLAIM FOR

- ☐ ABATEMENT OF TAX ASSESSED
- ☐ CREDIT AGAINST OUTSTANDING ASSESSMENTS
- ☐ REFUND OF TAXES ILLEGALLY COLLECTED
- ☒ REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

IMPORTANT
File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

COLLECTOR'S NOTATION
District
Account number
Date received
Stamp here
Collector of Internal Revenue

State of TEXAS } ss:
County of TAYLOR }

NOTICE TO COLLECTOR
Collector must indicate in block above the kind of claim, except in Income Tax cases.

Date received by Administrative Unit
Stamp here

TYPE OR PRINT

C. H. Bacon
(Name of taxpayer or purchaser of stamps.)

Abilene, Texas
(Residence—give street and number as well as city or town and State.)

Abilene, Texas
(Business address.)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

PERIOD	YEAR
From: 1-1	19 27
To: 12-31	19 27

1. Business in which engaged Corporate executive - Managing investments
2. Character of assessment or tax Income Tax
   (State for or upon what the tax was assessed or the stamps affixed.)
3. Amount of assessment or stamps purchased $2,311.82
4. Reduction of Tax Liability requested (Income and Profits Tax) $1,975.57
5. Amount to be abated $ None
6. Amount to be refunded (or such greater amount as is legally refundable) $1,975.57
7. Dates of payment (see Collector's receipts or indorsements of canceled checks) June 6, 1928

(If statement covers income tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed Dallas, Texas
9. District in which unpaid assessment appears
10. Amount of overpayment claimed as credit $
11. Unpaid assessment against which credit is asked; period from to $

Deponent verily believes that this application should be allowed for the following reasons:

In May, 1928, the Commissioner of Internal Revenue assessed against plaintiff additional income tax and interest for the year 1927 in the sum of $1975.57, which was paid to the Collector of Internal Revenue at Dallas under protest and duress on June 6, 1928. The additional tax assessed was occasioned by the Commissioner including as the income of claimant one-half of the income received by claimant and his wife in the year 1927, which income was community property under the laws of the State of Texas, whereas the claimant and his wife had filed separate

Collector of Internal Revenue

TYPE OR PRINT

C. N. Bacon
(Name of taxpayer or purchaser of stamps.)

Abilene, Texas
(Residence—give street and number as well as city or town and State.)

Abilene, Texas
(Business address.)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

PERIOD	YEAR
From: 1-1-27	19 27
To: 12-31-27	19 27

1. Business in which engaged Corporate executive - Managing investments
2. Character of assessment or tax Income Tax
(State for or upon what the tax was assessed or the stamps affixed.)
3. Amount of assessment or stamps purchased $2,311.82
4. Reduction of Tax Liability requested (Income and Profits Tax) $1,975.57
5. Amount to be abated $ None
6. Amount to be refunded (or such greater amount as is legally refundable) $1,975.57
7. Dates of payment (see Collector's receipts or indorsements of canceled checks) June 6, 1928

(If statement covers income tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed Dallas, Texas
9. District in which unpaid assessment appears
10. Amount of overpayment claimed as credit $
11. Unpaid assessment against which credit is asked; period from to $

Deponent verily believes that this application should be allowed for the following reasons:

In May, 1928, the Commissioner of Internal Revenue assessed against plaintiff additional income tax and interest for the year 1927 in the sum of $1975.57, which was paid to the Collector of Internal Revenue at Dallas under protest and duress on June 6, 1928. The additional tax assessed was occasioned by the Commissioner including as the income of claimant one-half of the income received by claimant and his wife in the year 1927, which income was community property under the laws of the State of Texas, whereas the claimant and his wife had filed separate income tax returns for the year 1927 and each had reported one-half of the community income and property so received in 1927. Claimant says that the original returns so filed by him and his wife were correct and that the action of the Commissioner in making said additional

(Attach additional sheets if necessary.)

Sworn to and subscribed before me this _____ day of _____, 19__

Signed:

_____

_____
(Title.)

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

o3—11704

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766—30. (Face p. 20.) No. 1

Schedule No. _____

CERTIFICATES

I certify that an examination of the records of the Bureau of Internal Revenue shows the following facts as to the assessment and payment of the tax:

NAME OF TAXPAYER.	Character of assessment and period covered.	List.	Year.	Month.	Page.	Line.	Amount.	Date paid.	District in which paid.
							$		

_____
Collector of Internal Revenue.

_____
Assessment Clerk, Commissioner's Office.

Claim No. _____

I certify that the records of my office show the following facts as to the purchase of stamps:

TO WHOM SOLD OR ISSUED.	Kind.	Number.	Denomination.	Date of sale or issue.	Amount.	If special tax stamp, state:	
						Serial number.	Period commencing—
					$		

_____
Collector _____ *District* _____

Claim No. _____

Schedule Number _____ District _____

Allowed or Rejected Number _____ _____
(Nature of tax.)

Claimant _____

_____

Collector of Internal Revenue.

_____

Assessment Clerk, Commissioner's Office.

Claim No. _____ Claim No. _____

I certify that the records of my office show the following facts as to the purchase of stamps:

To whom sold or issued.	Kind.	Number.	Denomination.	Date of sale or issue.	Amount.	If special tax stamp, state:	
						Serial number.	Period commencing—
					$		

_____

Collector _____ *District* _____

Schedule Number _____ District _____

Allowed or Rejected Number _____ _____

(Nature of tax.)

Claimant _____

Address _____

Examined and submitted for action _____, 19____

Schedule No. _____

Claim examined by—
Claim approved by—
Chief of Division.

COMMITTEE ON CLAIMS

Amount claimed... $_____ _____

Amount allowed... $_____ _____

Amount rejected... $_____ _____

93—11704

GOVERNMENT PRINTING OFFICE

D2

assessment is erroneous and illegal, in that under the Revenue Act of 1926, and the Constitution of the United States, a husband residing in Texas should report only one-half of the income received by him and his wife which is community property under the laws of Texas. The construction and application of the Revenue Act of 1926 made by the Commissioner of Internal Revenue in this case violates the terms and provisions of said Act, as well as those portions of Article 1 of the Constitution requiring uniformity in taxation and the apportionment of direct taxes among the several states, and also violates the due process clause of the Fifth Amendment to the Constitution and the Sixteenth Amendment to the Constitution. Because of these facts claimant is entitled to the refunding of the sums so paid, together with interest.

D3

In United States District Court

Motion for extension of time for appeal and order allowing same

Filed August 10, 1928

To the Honorable Wm. H. Atwell, Judge of said Court:

Comes now Geo. C. Hopkins, collector of internal revenue, by his counsel, and shows to the court that decision and determination respecting appeal from the judgment of the court entered in
59 this cause June 25, 1928, has not been made and communicated by the proper officials of the Department of Justice authorized by law to make such decision, and that it is necessary the time within which to settle and file bill of exceptions and do all other things necessary or required for effective appeal by the defendant from said judgment be extended thirty days from the expiration of the sixty-day period granted for that purpose by the judgment entered herein June 25, 1928.

Wherefore defendant prays the entry of an order extending such time for such period of thirty days.

NORMAN A. DODGE,
United States Attorney, Attorney for Defendant,
Geo. C. Hopkins, Collector of Internal Revenue.

Order

Upon consideration of the foregoing motion the same is granted and the time for settling and filing bill of exceptions and doing other things for effective appeal from the judgment of this court is hereby extended thirty days from the expiration of the sixty days originally granted by the terms of the judgment of June 25, 1928.

This 6th day of August, 1928.

WM. H. ATWELL,
United States District Judge.

60 In United States District Court

Petition for appeal

Filed Sept. 21, 1928

To the Honorable Wm. H. Atwell, District Judge:

Geo. C. Hopkins, collector of internal revenue, defendant, feeling aggrieved by the judgment rendered against him in the above-entitled cause on the 25th day of June, 1928, does hereby appeal from said judgment to the United States Circuit Court of Appeals for the Fifth Circuit for the reasons set forth in the assignment of errors filed herewith, and shows the said appeal is brought up by direction of the Bureau of Internal Revenue and the Attorney General, departments respectively of the Government;

Wher'fore he prays that his appeal be allowed; that no bond, obligation, or security be required to prosecute the same; that citation be issued as provided by law, and that a transcript of the record and proceedings upon which said judgment was based, duly authenticated be sent to the United States Circuit Court of Appeals for the Fifth Circuit under the rules of said court in such cases.

NORMAN A. DODGE,
United States Attorney, Attorney for
Geo. C. Hopkins, Collector of Internal Revenue.

61 In United States District Court

Order allowing appeal

Filed Sept. 21, 1928

The foregoing petition and assignments of errors accompanying the same are ordered filed, and the appeal is allowed without bond, obligation, or security, as therein prayed.

The 21st day of September, 1928.

WM. H. ATWELL,
United States District Judge.

In United States District Court

Assignment of errors

Filed Sept. 21, 1928

Comes now the defendant in the above-entitled cause and files the following assignment of errors upon which he will rely for prosecution of his appeal in said cause from the judgment rendered by the honorable District Court herein on the 25th day of June, 1928.

1

The District Court erred in rendering judgment against the defendant for the taxes sued for, because the allegations in the plaintiff's amended petition do not support the judgment, in that the income shown thereby to have been received which incurred the taxes in controversy is taxable to the plaintiff under the applicable revenue act of 1926.

62 2

The allegations of said petition do not support the judgment rendered because the income disclosed thereby as having been received by the plaintiff from community property under his dominion and control is taxable to the plaintiff under the said revenue act of 1926, the said judgment awarding recovery against defendant for taxes assessed to and collected from plaintiff on such income.

3

The said judgment which awards recovery of the taxes sued for is not supported by the special findings of fact filed by the court because the said findings disclose the income which incurred the taxes in controversy is community property of plaintiff and his wife under the community property system of Texas, which income is taxable to the plaintiff under the revenue act of 1926, and the said taxes were therefore legally assessed to and collected from him.

4

The said judgment is not supported by the special findings of fact because the titles to the community property therein mentioned from which $47,880.85 of the said net income was derived stood in the name of plaintiff, and the said community property and income derived therefrom were under the dominion and control of the plaintiff alone, as provided by the laws of Texas relating to such
63–64 community property, whereby the said income (in the sum total) was net income of the plaintiff within the scope and meaning of section 210 and section 211 of the revenue act of 1926, legally taxable to him, and recovery back of taxes which said judgment awards assessed and collected on the said income so derived is erroneous.

Wherefore the appellant, George C. Hopkins, collector, prays that said judgment be reversed and the said District Court be directed to enter judgment for the defendant and in accordance with law as shall be determined by the court.

NORMAN A. DODGE,
United States Attorney, Attorney for Defendant,
Geo. C. Hopkins, Collector.

[Citation in usual form showing service on Baker, Botts, Parker & Garwood et al. omitted in printing.]

65 In United States District Court

Praecipe for transcript of record

Filed Sept. 21, 1928

To the United States District Clerk, Dallas, Texas:

SIR: You will please include in the transcript of the record for the appeal in the above-entitled cause the following papers, proceedings, and documents:

1. Plaintiff's first amended original petition.
2. The answer of defendant.
3. The special findings of fact filed by the court, including the stipulation of facts adopted therein.
4. Judgment of the court.

5. Order extending time for appeal.
6. The petition for appeal and order of the court thereon.
7. Assignment of errors.
8. Citation on appeal.

NORMAN A. DODGE,
United States Attorney, Attorney for Defendant,
Geo. C. Hopkins, Collector of Internal Revenue.

It is agreed between counsel for the respective parties in the above cause that the foregoing papers, proceedings, and documents constitute a complete record on appeal in said cause.

66 This 21st day of September, 1928.

NORMAN A. DODGE,
United States Attorney, Attorney for Defendant,
Geo. C. Hopkins, Collector of Internal Revenue.
THOMPSON, KNIGHT, BAKER & HARRIS,
FULBRIGHT, CROOKER & FREEMAN,
BAKER, BOTTS, PARKER & GARWOOD,
By PALMER HUTCHESON,
Attorneys of Record for C. W. Bacon, Appellee.

[Clerk's certificate to foregoing transcript omitted in printing.]

67 [Minute entry of argument and submission, Dec. 4, 1929, omitted in printing.]

68 In United States Circuit Court of Appeals, Fifth Circuit

No. 5479

GEO. C. HOPKINS, COLLECTOR OF INTERNAL REVENUE, APPELLANT

VERSUS

C. W. BACON, APPELLEE

Appeal from the District Court of the United States for the Northern District of Texas

Norman A. Dodge, U. S. attorney; C. M. Charest, Gen. Counsel, Bureau of Int. Rev.; T. H. Lewis, jr. spec. atty., Bureau of Int. Rev., for appellant. Rhodes S. Baker, Harry C. Weeks, R. C. Fulbright, Palmer Hutcheson (Thompson, Knight, Baker & Harris; Weeks, Morrow, Francis & Hankerson; Fulbright, Crooker & Freeman; Baker, Botts, Parker & Garwood on the brief) for appellee. Monte M. Lemann and Chas. E. Dunbar jr., filed a brief as amici curiæ on behalf of Louisiana taxpayers.

Before WALKER, BRYAN AND FOSTER, Circuit Judges.

FOSTER, Circuit Judge:

Opinion

Filed Feb. 28, 1930

In this case it appears that C. W. Bacon and his wife are citizens of Texas and domiciled therein. The laws of Texas provide
69 for the matrimonial community. They made separate returns of the income of the community for the year 1927. The Commissioner of Internal Revenue held that the entire income should have been returned by the husband and determined a deficiency of $1,951.88, which was paid under protest and suit was brought to recover it back. The District Court held in favor of appellee and rendered judgment accordingly.

There is no doubt, as will appear from the well-considered opinion of the District Court, Bacon vs. Hopkins, 27 F. (2d) 140, and the authorities therein cited, that under the law of Texas the wife has a vested interest and not a mere expectancy in the community property. This is the controlling principle in determining whether the wife may file a separate return for her share of the community income. We have fully stated our views on this question in the case of Bender vs. Pfaff, F. (2d) , decided to-day, and need not repeat them in this case. No other question is presented.

Affirmed.

70 In United States Circuit Court of Appeals, Fifth Circuit

No. 5479

GEO. C. HOPKINS, COLLECTOR OF INTERNAL REVENUE

VERSUS

C. W. BACON

Judgment

Feb. 28, 1930

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

71 In United States Circuit Court of Appeals

Motion for Order Staying Mandate Pending Application for Certiorari Filed March 13, 1930

[Title omitted.]

To the said honorable court:

Comes now Geo. C. Hopkins, collector of internal revenue, appellant in the above cause, by his counsel, and shows to the court this cause is one of several test cases arranged in the various community property States pursuant to suggestions contained in the Attorney General's opinion of July 16, 1927, and that a petition for writ of certiorari in due course is expected to be filed for review of the questions involved herein by the Supreme Court.

Appellant further shows to the court that the proceedings to accomplish such review will require a period of time greater than twenty-one days from the date of the decision of the court herein, and that a reasonable time thereafter is necessary for that purpose.

Wherefore appellant prays for an order staying issuance of mandate herein thirty days after the expiration of the twenty-one days from the date of the decision affirming the judgment of the trial court, to wit, thirty days after March 21, 1930.

(Signed) NORMAN A. DODGE,
United States Attorney,
Attorney for Appellant.

72 In United States Circuit Court of Appeals

[Title omitted.]

Order staying mandate

On consideration of the application of the appellant in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days from March 21, 1930, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from March 21, 1930, there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record, and brief have been filed, and that due proof of service of notice thereof under paragraph 3 of rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from March 21, 1930,

unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 13th day of March, 1930.

(Signed) N. P. BRYAN,
United States Circuit Judge.

73 [Clerk's certificate to foregoing transcript omitted in printing.]

74 In Supreme Court of the United States

Order allowing certiorari

Filed May 26, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is advanced and assigned for argument on Monday, October 20th next, immediately following case No. 882, Fred O. Goodell, Collector of Internal Revenue, vs. I. B. Koch.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Indorsement on cover:] File No. 34,952. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 84. Geo. C. Hopkins, Collector of Internal Revenue, petitioner, vs. C. W. Bacon. Petition for writ of certiorari and exhibit thereto. Filed April 17, 1930. File No. 34,952.

U. S. GOVERNMENT PRINTING OFFICE: 1930